

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FRANCIS EDLIN and DEPARTMENT OF THE ARMY,
ARMY CORPS OF ENGINEERS, ROCK ISLAND DISTRICT, IL

*Docket No. 97-2778; Submitted on the Record;
Issued November 4, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant is entitled to continuation of pay for the period November 22 through December 2, 1995.

On November 22, 1995 appellant, then a 56-year-old lock/dam operator, sustained a lumbar strain, resolved as of December 11, 1995.

In a disability certificate dated December 1, 1995, Dr. Gordon Stephens, a chiropractor, stated that appellant was in his office for treatment on that date and could return to work on December 3, 1995.

In clinical notes dated December 8, 1995, Dr. Mark D. Canty, a Board-certified family practitioner, provided a history of appellant's condition and findings on examination, noted that appellant's lumbar strain was completely resolved, and that he was back at work without restrictions.

In a form report dated December 8, 1995, Dr. Stephens indicated that appellant was totally disabled from November 22 to December 3, 1995 and was able to perform light work as of December 3, 1995.

By decision dated May 9, 1996, the Office of Workers' Compensation Programs denied appellant's claim for continuation of pay for the period November 22 through December 2, 1995 on the grounds that there was no competent medical evidence of disability for work as a result of the employment injury.

By letter dated August 12, 1996, appellant requested reconsideration of the denial of his claim for continuation of pay and submitted additional evidence.

In a report dated August 5, 1996, Dr. Canty stated that he had evaluated appellant for low back pain on December 11, 1995 and, at that time, he had reviewed appellant's lumbar spine

films from Dr. Stephens and he agreed with the reading that there was an L5 rotation as well as anterior subluxation of the spine.

By letter dated September 26, 1996, the Office referred appellant's x-rays to Dr. Dan R. McFarland, a Board-certified radiologist, and asked him for an opinion as to whether the x-rays showed any subluxation of the spine.

In a report dated September 30, 1996, Dr. McFarland stated that he had reviewed the x-rays of appellant taken on November 22, 1995 and stated that there was no evidence of subluxation of the lumbar spine.

By decision dated November 1, 1996, the Office denied modification of its May 5, 1996 decision.

By letter dated March 25, 1997, appellant requested reconsideration and submitted additional evidence.

In a report dated November 22, 1995, Dr. C.M. Becker, a chiropractic radiologist, diagnosed a straight lumbar lordosis. Included in his findings was the statement that there were multiple extension subluxations associated with a straightening of the normal lordotic curve compatible with myospasm.

In a report dated January 24, 1997, Dr. Stephen M. Smith, a Board-certified diagnostic radiologist, indicated that he had reviewed appellant's x-rays of his spine and noted, "unremarkable radiographs of the lumbar spine."

By decision dated May 19, 1997, the Office denied modification of its November 1, 1996 decision.

The Board finds that the Office properly determined that appellant was not entitled to continuation of pay for the period November 22 through December 2, 1995.

The Board has noted that in assessing medical evidence the weight of such evidence is determined by its reliability, its probative value and its convincing quality, and the factors which enter into such an evaluation include the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion.¹ The Board has also set forth other factors which bear on the probative value of medical opinions, including whether the medical opinion is speculative or equivocal, whether the physician applies a proper standard for compensability, whether the physician is a specialist in the appropriate field of medicine and whether the medical opinion is of general application rather than addressed to the particular circumstances at hand.²

¹ See *Melvina Jackson*, 38 ECAB 443, 449-50 (1987).

² *Id.* at 450.

In this case, appellant sustained a lumbar strain on November 22, 1995 in the performance of duty. However, there is insufficient medical evidence to establish that appellant was disabled during the period November 22 through December 2, 1995 as a result of his employment injury.

In a disability certificate dated December 1, 1995, Dr. Stephens, a chiropractor, stated that appellant was in his office for treatment on that date and could return to work on December 3, 1995. In a form report dated December 8, 1995, Dr. Stephens indicated that appellant was totally disabled from November 22 to December 3, 1995 and was able to perform light work as of December 3, 1995. Under section 8101(2) of the Federal Employees' Compensation Act, chiropractors are only considered physicians, and their reports considered medical evidence, to the extent that they treat spinal subluxations as demonstrated by x-ray to exist.³

As Dr. Stephens did not diagnose a lumbar subluxation as shown by x-rays to exist, he is not considered a physician under the Act and this report is not sufficient to establish that appellant sustained any disability from November 22 to December 2, 1995 causally related to his employment injury.

There is no medical evidence of record that appellant was disabled during the claimed time period, therefore, appellant has not established entitlement to continuation of pay benefits. Furthermore, the weight of the medical evidence is insufficient to establish a diagnosis of subluxation.

In clinical notes dated December 8, 1995, Dr. Canty, a Board-certified family practitioner, provided a history of appellant's condition and findings on examination, noted that appellant's lumbar strain was completely resolved, and that he was back at work without restrictions. As Dr. Canty did not opine that appellant was disabled from November 22 to December 2, 1995 as a result of his employment injury, this report is not sufficient to discharge appellant's burden of proof.

In a report dated August 5, 1996, Dr. Canty stated that he had evaluated appellant for low back pain on December 11, 1995 and, at that time, he had reviewed appellant's lumbar spine films from Dr. Stephens and he agreed with the reading that there was a subluxation of the spine.

In a report dated November 22, 1995, Dr. C.M. Becker, a chiropractic radiologist, diagnosed a straight lumbar lordosis. Included in his findings was the statement that there were subluxations of the spine.

However, there are reports of record from two specialists in this case. Two Board-certified radiologists reviewed the x-rays taken by Dr. Stephens and found no evidence of subluxation. As these Board-certified radiologists are specialists in the interpretation of x-rays, their opinions as to whether appellant sustained a subluxation of the spine are more probative than the opinions of Drs. Canty and Becker who are not Board-certified specialists in radiology.

³ 5 U.S.C. § 8101(2); see *Jack B. Wood*, 40 ECAB 95, 109 (1988).

Dr. McFarland, a Board-certified radiologist, stated that he had reviewed the x-rays of appellant taken by Dr. Stephens on November 22, 1995 and found no evidence of subluxation of the lumbar spine.

In a report dated January 24, 1997, Dr. Stephen M. Smith, a Board-certified diagnostic radiologist, indicated that he had reviewed appellant's spinal x-rays and noted, "Unremarkable radiographs of the lumbar spine."

Again, there is no opinion provided by any of the physicians of record that appellant was disabled during the applicable time period. As the only medical evidence of record stating that appellant was disabled from November 22 through December 2, 1995 consists of the reports of Dr. Stephens, and since Dr. Stephens is not considered a physician under the Act because he did not report that he was treating appellant for a diagnosis of subluxation, the weight of the medical evidence does not establish that appellant sustained a spinal subluxation, there is no competent medical evidence of record establishing that appellant had any disability causally related to his November 22, 1995 employment injury. Regarding the diagnosis of subluxation, the Board finds that the weight of the medical evidence is represented by the reports of the Board-certified specialists in radiology, Drs. McFarland and Smith, who found no subluxation of the spine. Therefore the Office properly denied appellant's claim for continuation of pay for the period November 22 through December 2, 1995.

The decisions of the Office of Workers' Compensation Programs dated May 19, 1997 and November 1, 1996 are affirmed.

Dated, Washington, D.C.
November 4, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member